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**IN THE  
COURT OF APPEALS OF INDIANA**

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IN RE THE MATTER OF THE INVOLUNTARY )  
TERMINATION OF THE PARENT-CHILD )  
RELATIONSHIP OF J.B., AND S.B., CHILDREN )  
AND THEIR MOTHER ALISHA DECKER, )

ALISHA DECKER, )

Appellant-Respondent, )

vs. )

MARION COUNTY OFFICE OF FAMILY )  
AND CHILDREN, )

Appellee-Petitioner, )

and )

CHILD ADVOCATES, INC. )

Co-Appellee (Guardian ad Litem. )

No. 49A02-0606-JV-543

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APPEAL FROM THE MARION SUPERIOR COURT  
The Honorable, Deborah Shook Judge  
Cause No. 49D09-0411- JT-335

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**February 13, 2007**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**BARNES, Judge**

**Case Summary**

Alisha Decker appeals the termination of her parental rights. We affirm.

**Issue**

The sole issue Decker raises for our review is whether there is sufficient evidence to support the termination of her parental rights.

**Facts**

The facts most favorable to judgment reveal that Decker is the mother of J.B. and S.B., who were born on November 18, 2000 and November 23, 2003, respectively. Decker was fourteen years old at the time J.B. was born and was seventeen years old at the time S.B. was born. At the time of both children's births, Decker lived with her guardian, a man she has identified as her grandfather.

When S.B. was born, she tested positive for marijuana, and the Marion County Department of Child Services ("DCS") filed a petition alleging J.B. and S.B. were children in need of services ("CHINS"). On December 10, 2003, Decker admitted the

allegations in the CHINS petition. Following the children's adjudication as CHINS, the children were removed from Decker's custody, but DCS recommended that the children be placed in Decker's care for a temporary in-home trial visit. This living arrangement was conditioned on Decker's willingness to comply with certain services, including counseling, and to submit to drug screens. It does not appear that J.B. and S.B. were removed from Decker's physical custody during this time. By the time Decker was scheduled to begin counseling at the end of December 2003, she had moved out of her guardian's residence, and she and the children were living with Decker's mother.

In early February 2004, the State filed a delinquency petition against Decker alleging that she had committed acts that would constitute forgery if committed by an adult. Her guardian was the alleged victim of the forgery, and the juvenile court forbade Decker from having contact with her guardian. From early February 2004 through March 4, 2004, Decker was detained in the juvenile detention facility. Decker's mother cared for J.B. and S.B. during Decker's incarceration. On March 4, 2004, after being adjudicated a juvenile delinquent, Decker was placed on home detention at her mother's residence. Decker continued to care for her children until April 20, 2004, when the DCS removed them from her custody.

J.B. and S.B.'s removal was premised on contentions that Decker had failed to comply with mandatory counseling, had engaged in criminal activity, and had tested positive for cocaine and marijuana when she was taken to the detention center in February 2004. Following DCS's removal of the children, Decker refused to take many drug screens and stopped contacting her case manager. Some time around July 2004, the

trial court suspended Decker's visitation with the children, and they were moved to a foster home, where they have continued to live since that time.

In August 2004 Decker turned eighteen. In November 2004 Decker contacted her case manager and asked to participate in services again. Her case manager referred Decker for a drug assessment and a series of drug tests. At this time, Decker's opportunity for future visitation with the children was premised on her successful completion of five negative screens. Decker failed to follow through with her case manager's referrals and the drug screens and again fell out of contact with her case manager. In October 2005 Decker was convicted of residential entry and possession of marijuana. In May 2006, Decker pled guilty to and was convicted of auto theft.

The trial court heard evidence in this matter on February 16, 2006 and May 10, 2006. On May 24, 2006, the trial court terminated Decker's parental rights. Decker now appeals.

### **Analysis**

Decker contends that there was not sufficient evidence to support the trial court's termination of her parental rights. We disagree. Although the Fourteenth Amendment to the United States Constitution protects parents' rights to raise their children, those rights are not absolute. In re R.J., 829 N.E.2d 1032, 1035 (Ind. Ct. App. 2005). When parents are unwilling or unable to fulfill their parental responsibilities, their rights may be terminated. Id. Such action is taken not to punish the parents, but to protect the children. Id.

When faced with a challenge to the sufficiency of evidence, we will consider only the evidence and reasonable inferences therefrom that are most favorable to the judgment and will not reweigh the evidence or judge the credibility of the witnesses. In re J.W., 779 N.E.2d 954, 959 (Ind. Ct. App. 2002), trans. denied. Where, as here, the trial court has entered findings of fact, we engage in a two-tiered standard of review: We must determine whether the evidence supports the findings and whether the findings support the judgment. Id. We will set aside the trial court's findings and judgment only if they are clearly erroneous. Id. A finding is clearly erroneous when there are no facts or inferences drawn therefrom that support it. Id. A judgment is clearly erroneous when a review of the record leaves us with a firm conviction that a mistake has been made. Id. We find no error in the trial court's findings or judgment in this case.

Indiana Code Section 31-35-2-4(b)(2)<sup>1</sup> requires that a petition to terminate parental rights must allege that:

- (B) there is a reasonable probability that:
  - (i) the conditions that resulted in the child's removal or the reasons for placement outside the home of the parents will not be remedied; or
  - (ii) the continuation of the parent-child relationship poses a threat to the well-being of the child;  
[and]
- (C) termination is in the best interests of the child . . . .

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<sup>1</sup> Decker does not argue that the trial court erred regarding the other requirements set forth in 31-35-2-4(b)(2).

Although the trial court made findings and conclusions related to both Indiana Code Section 31-35-2-4(b)(2)(i) and (ii), the State only had to establish one of them by clear and convincing evidence. See In re J.W., 779 N.E.2d at 959. Decker challenges the sufficiency of DCS's evidence with regard to both Indiana Code Sections 31-35-2-4(b)(2)(B) and (C). We conclude there is ample evidence that termination is in J.B. and S.B.'s best interests and that continuation of Decker's relationship with the children poses a threat to their well-being.

In support of its decision to terminate Decker's parental rights, the trial court entered the following findings and conclusions:

#### FINDINGS OF FACT

\* \* \* \* \*

7. There is a reasonable probability that the conditions which resulted in the removal of the children and the reasons for their continued placement outside of their mother's care will not be remedied, and that continuation of the parent-child relationship poses a threat to the children's well-being.

8. Alisha Decker has been in and out of jail through out [sic] the entire time her children have been wards.

9. After Ms. Decker's children were found to be Children in Need of Services, Ms. Decker stole checks from a man she describes as her "grandfather". She was subsequently convicted of a crime related to this event.

10. Ms. Decker was convicted of Residential Entry and Possession of Marijuana on October 3, 2005.

11. On the last date of trial, Ms. Decker was in jail .

...

12. Ms. Decker's visitation with her children was suspended by the juvenile court pending completion of five negative screens. Ms. Decker never completed the five screens and has not seen her children in almost two years.

13. Ms. Decker was offered the opportunity to participate in drug and alcohol treatment but she chose to not participate in this service.

14. Ms. Decker was offered home based counseling. This service closed unsuccessfully. The home based counselor had concerns about Ms. Decker's honesty regarding her drug use, her refusal to participate in mental health counseling, her instability both in housing and income, as well as with her parenting skills.

15. The children need permanence and stability so that their mental, physical and emotional needs will be met by a consistent, permanent caretaker throughout their childhood.

16. Ms. Decker cannot provide this stability . . . .

17. [J.B.] has lived with his foster parents since he was three years old. [S.B.] was five months old when placed in foster care. [J.B.] is now five years old and [S.B.] is two. They are placed together and are bonded with the foster parents. The foster parents would like to adopt [J.B.] and [S.B.].

\* \* \* \* \*

## CONCLUSIONS OF LAW

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3. There is a reasonable probability that the conditions that resulted in the children's removal from and continued placement outside the care and custody of Ms. Decker will not be remedied.

4. There is a reasonable probability that the continuation of the parent-child relationship between the

children and their mother, Alisha Decker, poses a threat to the well-being of the children.

5. Termination of the parent-child relationship between the children and their mother is in the children's best interest.

\* \* \* \* \*

App. pp. 10-12.

Rebecca Bickel, the home-based counselor assigned to Decker's case, testified that that she had difficulty meeting and setting appointments with Decker on a regular basis. Bickel testified, for instance, that she "only saw [Decker] once in the month of February. The other times was [sic] kind of sporadic." Tr. p. 31. With regard to the specific counseling programs and other resources to which Bickel referred Decker, Bickel stated: "Her flat out refusal to do any kind of counseling concerned me. It showed me that she wasn't willing to start working towards stability." Id. at 35. In addition to Bickel's testimony that her contact with Decker was sporadic, Decker herself testified that it had been almost a year since she had tried to call her case manager, Sharon Renforth. Finally, Bickel testified the drug screens indicated that Decker continued to use drugs—marijuana and others—during the time that she was involved in home-based counseling. After Decker's home-based counseling was suspended, she never achieved the number of negative drug screens necessary to reinstate those services.

With regard to her criminal history, Decker testified that she had been convicted of residential entry and possession of marijuana. At the time she testified, she stated that she had been charged with criminal recklessness, criminal mischief, auto theft, and theft,

and that those charges constituted a probation violation for Decker's previous convictions. She was incarcerated at the time of the February 16, 2006 and May 10, 2006 evidentiary hearings in this matter. Prior to her criminal convictions, Decker was adjudicated to be a delinquent juvenile and spent a period of time in the detention center before returning to her mother's home on home detention.

Decker's formal education extends only to her completion of the seventh grade. At the time of the February 16, 2006 evidentiary hearing, Decker was unemployed because, prior to her incarceration, she quit her job at Taco Bell. Decker does not have a home of her own in which to raise her children and, instead, has alternated between living with her mother and her guardian.

During the May 10, 2006 evidentiary hearing, Renforth testified that Decker had not seen her children since June or July 2004. Renforth further testified that J.B. and S.B. have been living with their foster parents for over two years and that they have a stable environment there, where, "They are considered a part of that family not only by the family, relatives, community, church, but they also consider themselves a part of that family." Id. at 202. J.B. and S.B.'s foster parents would like to adopt them, and Renforth testified that she believes that arrangement is appropriate. Similarly, Patti Cavanaugh, the children's guardian ad litem, testified that J.B. and S.B. appear comfortable in their foster parents' home. Cavanaugh recommended that the children be adopted by their foster parents.

Decker's visitation with her children was terminated nearly two years before the trial court's decision in this matter, and she has not seen her children since that time.

Moreover, Decker was given opportunities to either retain her visitation rights or have those rights reinstated by participating in counseling services and testing negative for drugs a certain number of times. Decker failed to so much as begin the recommended counseling or drug testing. Even if Decker's visitation rights had remained intact, however, her visitation with J.B. and S.B. would have been interrupted by her frequent incarcerations during the past several years.

Not only does the evidence indicate that Decker is unable to form a stable relationship with the children, but it is clear that she is not in a position to provide for them financially. Although Decker had a job at the time the CHINS proceedings began, she voluntarily left that job before her most recent incarceration. Even if she had not quit her job, Decker's income would have been interrupted while she was incarcerated. To continue Decker's parental relationship with J.B. and S.B. under these conditions would threaten the children's well-being.

Finally, we conclude that the evidence is sufficient to prove that termination of Decker's rights is in the children's best interests. The evidence reveals that J.B. and S.B. have bonded with their foster family and the foster family's extended family and support network. The children have been in their current placement for over two years, and, at least as far as S.B. is concerned, her foster family is the only family she knows. This evidence, coupled with the evidence that Decker is not able to provide for her children emotionally or financially, is sufficient to support the trial court's conclusion that termination is in the children's best interests.

### **Conclusion**

The trial court's decision to terminate Decker's parental rights is supported by clear and convincing evidence. We affirm.

Affirmed.

BAILEY, J., and VAIDIK, J., concur.